

First Principle

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Tactics and Targets

Much of the discussion at the Conference on Government Spying (held in Chicago this January 20-23) concerned the art of generating public support so that the political police operations of our intelligence agencies can be brought to an end.

The problems which have to be solved in order to organize a movement against a secret police apparatus are also, in a way, a definition of the issue. People are reluctant to believe what has gone on, or, knowing the facts, are reluctant to follow them to their logical conclusion — that nothing short of comprehensive reforms will prevent a resurgence of government interference with political activity.

The Conference focused on a combination of

three main areas for generating public support against political spying in America. To be effective, these must be coordinated and undertaken at the federal, state, local, and private levels.

First, lawsuits for civil damages against agencies and officials are proving an effective tool. They can expose unknown programs, muster the support of the courts and/or the community, and demonstrate where the laws which are currently on the books do not protect essential political rights and need to be changed.

Second, law suits tie into another channel for change — getting the issue into the press. The public has to be educated about not only what has gone on but also what is still going on, what

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should be changed, and what will produce real rather than cosmetic reforms.

And third, the final tool for reform is in the country's legislatures. The momentum established by litigation and press coverage must be carried through in statutes against spying on political activities. Public pressure must be built up for enacting laws that can ensure that abuses of secret power cannot happen again.

Civil courts, the press, the legislatures, then, are the forums where the problem of political surveillance can be addressed. But in doing this there is an additional factor which must be kept in mind, and that is the sheer scope of the problem and the resources of an intelligence network which includes federal, state, local, and "private" levels of society.

It would be too easy to concentrate the reform effort on the federal agencies, and end up allowing the state, local, and "private" sectors to expand and fill the vacuum. Investigations of local operations typically end up as news in only one locality, while the federal agencies are automatically considered newsworthy. The investigations of the FBI, CIA, NSA, IRS, military intelligence and the rest have gotten a great deal of press coverage, but one result is that the abuses seem to be a federal phenomenon. Everything else then tends to look like an isolated fluke instead of being what it is — part of a hydra-headed system, where when one head is cut off, another grows to take its place. History shows, for example, that when the federal domestic intelligence apparatus lay dormant between 1920 and 1939, local "red squads" flourished. There is no reason why the same thing could not happen again, especially if there are loopholes which allow federal agencies to continue to train and/or fund red squads.

But regulating governments — federal, state, or local — is in many ways a relatively easy task compared to coping with the least known segment of the intelligence network. For there also exists something of which we were little aware only a short time ago — the "private" intelligence agencies. The article on page 10 describes the workings of the Law Enforcement Intelligence Unit, but there are others. Private corporations, such as Chrysler, have their own political intelligence systems; pri-

vate detective agencies, such as Wackenhut, have long been used for political spying and maintain extensive files on citizens. There are also the militant right-wing organizations, such as SAO in San Diego and the Legion of Justice in Chicago, who have evidently had illegal activities farmed out to them by police agencies. And there is a publication called "Information Digest," which offers a "private" alternative to official dissemination of information on political activities.

There are also new technological threats which make the intelligence systems difficult even to understand, much less control. Spying technology and data systems have entered the space-age but we have only horse-and-buggy era laws to regulate them.

And finally, it is one measure of the scope of the problem that the intelligence network has some substantial tactical advantages over the groups which are trying to bring them under control. In court, they have (compared to the plaintiffs) unlimited financial resources, the physical possession of the evidence, and benefit of the general assumption that the government cannot, by definition, break the law. In the press, they have practiced and effective propaganda techniques. And in legislatures, they have long had their advocates to take care of their interests.

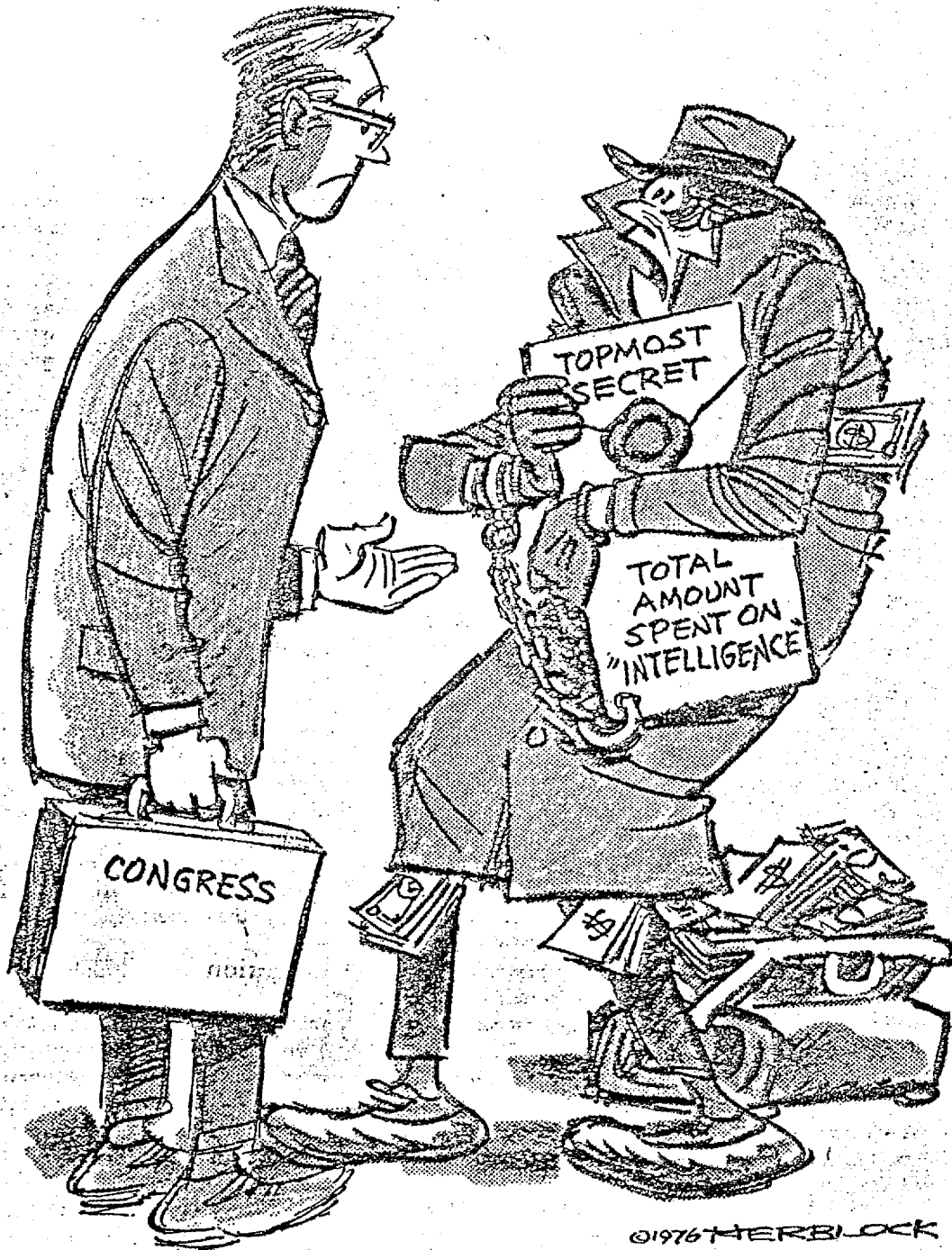
Litigation

The Conference's workshop for litigators has provided the start of being able to readily pass the experience of the many red squad suits which have already gotten underway among interested people and organizations. Chicago's Better Government Association produced a litigation manual¹ for the workshop, and there are now plans for putting together a library for documents coming out of such suits.

Suing for a civil damages and injunctive relief is the first line of attack against political police operations. Prosecutors (even when they have produced good reports on systematic abuses of police power, such as the Cook County Grand Jury Report²) have not yet proven that they are willing to use the existing laws against government officials.

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"WE CAN'T RUN THE RISK OF HAVING IT LEAK OUT
TO THE U.S. TAXPAYERS"



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But in civil suits, citizens can sue on their own behalf and step outside of the old-boy system which exists between prosecutors and police and between the Justice Department and the federal intelligence agencies.

What Litigation Can Do

Litigation is a mixed blessing. It presents both opportunities and dangers. It can offer relief — damages awarded to the victims, judgments declaring policies and programs illegal or unauthorized, and injunctions against continuing programs. The information dug out in court can be used to educate society — courts, public, and legislatures alike — about the political police problem. And such grappling with the issues in the judicial forum can show dramatically where the holes in existing law are; there are, for example, no laws regulating any of the uses of paid informers.

But there are problems. The record of judges sympathies to the plaintiffs in anti-spying litigation is mixed. In some suits, such as with Judge Griesa in the SWP case¹ and Judge Kirkland in the *Alliance/ACLU* suit,⁴ judges from politically conservative backgrounds have been sufficiently aghast at the sheer weight of evidence presented and at the kinds of obstruction which the government has practiced that they have become sympathetic in the course of the litigation. It is possible for the judicial attitudes, as well as public opinion, to change.

In the *Hampton*¹ suit, however, Judge Perry's sympathies are clearly with the government, although even there the court has found itself having to deal with open noncompliance with its orders.

But even where the judge is, to say the least, unsympathetic, as in the *Hampton* suit, valuable new information has come out. When Fred Hampton was killed, the public cried foul, but it is only in the past year that the seven-year-old lawsuit dug out documents showing that it was the FBI that had orchestrated the States Attorney's fatal assault on Hampton's apartment.

All this shows that court ordered discovery, even from an unsympathetic judge, can produce critical new information about the character and extent of "intelligence" operations, and that it pays to litigate violations of your rights. For another ex-

ample, it seems safe to say that after the FBI's debacle with their SWP informer, Timothy Redfearn (now residing in a Colorado jail for his freelance burglaries) that they will be more circumspect about their use of informers. At the same time, the Redfearn revelation dramatizes to the public both the fact that current FBI procedures make use of criminal tactics and that the informer situation is an issue in need of reform.

The Pitfalls in Litigation

Litigation entails some real risks: you may not win your case, especially in an area of law which is heavily weighted against the plaintiffs. Courts have made a practice of being generally deferential toward government agencies (especially when they claim to represent compelling state interests), they are shy about deciding political questions, and the intelligence system can use its secrecy to obscure and obstruct issues and evidence. Any suit involves the risk of "vindicating" the guilty; there are risks of court approval, such as happened in *Laird v. Tatum*,⁶ where the Supreme Court decided it was alright for the Army to compile dossiers on civilian political activities.

While the award of money damages should be a substantial deterrent to future officials there has been little of it so far. If it comes, it could provide a great impetus to the campaign against government spying, as Ralph Nader's settlement for GM's spying on him provided the financial base for his public interest operations.

But unless and until a suit is won, money is a problem. Law suits are long, complex, and expensive. The *Hampton* suit has been in progress for seven years now. It's lawyers don't have the funds to pay for a transcript of the lengthy trial. And since the suit was filed, the political context has shifted and the Panthers no longer have the political vitality they once had.

New legislation could make the civil courts a better forum for protecting political rights.⁷ For instance, statutory provisions for attorneys fees, including interim awards, could be enacted.

And finally, we do not know how effective court orders against the intelligence units and their officials could turn out to be. Under cover of secrecy,

neither the courts nor the public can have much assurance that they will be obeyed.

Lawsuits and Publicity

With the risks and limitations that are part of lawsuits, they should be approached not as ends in themselves (which they can be if they win big), but as an organizing tool along the way. Class actions⁸ can generate enormous community support for reform, but these suits also require a lot in the way of financial resources in order to carry them through. But if your class discovery⁹ produces files on a quarter of a million people, you have found a built in base of support which can be organized.

From the outset, lawsuits should try to draw together a broad range of political interests. The *Benkert* suit in Michigan¹⁰, almost by accident, has mostly anti-war people as its named plaintiffs; its attorneys have advised other suits to include other political interest groups, such as women, blacks, and labor.

Organizing the Issue for the Press

Winning a case is not the same thing as reforming an issue. Unless information about the suit goes out to the press, its life in court can go by virtually unnoticed.

Intelligence Agency Manipulation of the Press

The ways the intelligence agencies maneuver press coverage is one of the things which could prevent the recent revelations from leading to effective reforms. It is true that the press covered the official investigations, like scandals generally, with a certain amount of enthusiasm. But it is likewise true that the intelligence bureaucracies have been effective in using the press to complain about their press coverage. They complain at length about "leaks" of intelligence information, but quietly fail to point to one that has damaged the national security rather than their public image.

Without saying so in so many words, they have taken the position that any discussion of their activities which they do not control will jeopardize the security of the nation.

The press for the most part has been willing to accept the agencies' complaints at face value. The controversy over the CIA budget is such an example. The budget should be open to see where the money goes — what proportion, for instance, has been turned back against Americans? It is said that they have washed their hands of the domestic intelligence business, but how much is spent tailing Americans overseas, and carrying out operations through the other loopholes which remain? Instead, the line the CIA pushes is that the world is too dangerous for making public even gross budget figures. The budget figures, which are secret in order to prevent debate about the way that money is being spent, are kept secret because the Russians by some unspecified process will allegedly be able to figure out vital secrets.

The CIA's handling of the Richard Welch assassination in Athens a year ago is another example of controlling public opinion by feeding the public only what it wants us to know. Welch himself had been warned by the CIA that it was dangerous to live in what was publicly known to be the CIA Station Chief's house, but he liked the house and chose to live dangerously. When he was killed, however, the CIA did not mention that fact but the generally irrelevant detail that his name had been mentioned six months earlier as a CIA/Latin American agent in a magazine called *Counterspy*. The conclusion which they drew for the press was that domestic debate about CIA operations would lead to the killing of CIA people.

The FBI has its own ways of shaping press coverage. To cope with the obvious problem that the FBI's COINTELPRO had little to do with counter-espionage, the intelligence agencies have produced a rash of recent and publicized arrests for espionage in this country. It creates an impression of a formidable espionage threat, but it does it by violating one of the basic tenets of counterespionage. Standard operating procedure recognizes that you cannot profitably arrest a spy. The interests of national security are better served by recruiting spies as double agents, by feeding them false information, and/or watching for further espionage contacts. For the purposes of manipulating public opinion, the intelligence agencies have been willing to sacrifice these opportunities in order to look as

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if their counterintelligence threats were a plausible justification for what they were doing.

A final set piece in the discussion of intelligence operations is that because they are there to deal with terrorism, their critics are in effect advocating violence. This is in largely fabrication, but the press generally lets such Bureau comments pass without comment. For example, the FBI has used agents provocateur to create the violence that they need in order to get the support of a frightened public. Even without accusing the FBI of creating more violence than it prevents, their definition of potential terrorism is elastic in the extreme. FBI Director Kelley has testified that the slogans to "Free the Oglala Four" were being used to incite a jail-break.

The Government Accounting Office report on FBI effectiveness could not find indications that the FBI was successful at preventing a single act of genuine terrorism. When confronted with the SLA or a list of fugitives who know that they have a great deal to hide, their successes have been conspicuous in their absence.

It has been with good reason that the intelligence agencies take the position that failures are trumpeted while successes are unheralded. The campaign against Martin Luther King, Jr. was a failure in that it did not prevent his being awarded the Nobel peace prize — the debacle of a program against an apostle of non-violence has become an example of a trumpeted failure. What goes unheralded are the record of successes — that none of the people on the list of potential black messiahs (King's among them) is still alive. This can hardly be by coincidence alone, but the details may never be known.

This brings us to the final element of the intelligence agencies' posture before the press — that there is nothing much left to reform. There are several components which make up this press line.

First, they maintain that simple revelation has been enough to end their carrying out the same questionable activities in the future. They do not mention that revelation can as easily be seen as a signal to keep their secrets better.

Second, by saying that the situation is now reformed, they short circuit some of the necessary political conclusions. There is apparently less political repression going on just now, but there is also less political activity. While it may not be possible to prove to determined skeptics that secret police activities successfully ensured that the momentum of the anti-war movement would not be able to survive the end of the Vietnam war, this is a point which is not seen in the conventional press.

Instead, the agencies prefer to feed the press the impression that they have actually been too inept

to be dangerous. They released vast quantities of data about their unsuccessful assassination attempts on foreign leaders; they avoid saying anything about the lower echelons in foreign countries who they have one way or another disposed of. Operation Phoenix left (by Colby's count) 20,000 dead, but the CIA preferred to divert attention from such successes by releasing a mass of documentation about trying to make Castro's beard fall out. As a gambit in shortcircuiting reforms, the CIA prefers to take egg on its face than to be taken too seriously.

Domestically, the situation is similar. The press is told about the Chicago red squad's wasting its time compiling a dossier on such dubious dissidents as the Episcopal Bishop of Chicago, which is outrageous but silly. But the press has paid little attention to the assassination of Fred Hampton, which is outrageous and deadly serious.

The Press As a Resource for Confronting Issues

The goal of press coverage is to change the political climate. A large proportion of the public still believes that if you are not doing anything wrong, it makes no difference if the government checks up on you. Yet the record shows that there is no such thing as innocent political surveillance, and this fact must be brought home.

The first step is to convince the public that political surveillance is everyone's problem, that anyone engaged in any political activity can have a fat dossier on them. The *ACLU/Alliance* lawsuit in Chicago got some of the subjects of the files which were released in that suit to go public. The fact that people whose political interests are on the order of Albert Jenner's (Minority Counsel to the Senate Watergate Committee) should make the public realize that red squads have been into everyone's business.

Once you establish that it is a problem which affects everyone, you have to counter the disinformation campaign of the intelligence agencies and show that it is still going on and that it is still dangerous.

The Socialist Workers Party lawsuit offers examples of how this can be worked out in practice. When the Denver office of the SWP was burgled last summer, they called in the press to accuse the FBI. With the lawsuit as a prod, the fact that the burglar was an FBI informer broke open. The small furor which this generated in the press meant that the government had to respond, and the affair culminated with the Attorney General announcing that the 40 year investigation of the SWP was drawing to a close — sort of. What the AG actually meant is that while they weren't going to in-

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investigate the *organization* any more, they would investigate *individuals* in the organization. But the press coverage prodded the AG into giving the SWP some useful public concessions. First, it meant that the government has admitted it doesn't have the authority to spy on the SWP; and second, it demonstrates that the litigation has not been mooted by the passing of time, that the threat is still going on.

An additional problem is getting the press to interpret what the executive branch says. They ordinarily accept the notion that news is what government officials say that it is. For example, when Ford handed down a new executive order¹¹ to (he said) place strict controls on the intelligence agencies, the press reported it the way the White House told it. Yet it was obvious that the EO was riddled with so many exceptions that it restricted only drug testing on unsuspecting Americans and assassination, and authorized virtually everything else.

Press coverage can produce political results. The CIA's manipulation of the Welch murder is one such political success, while in Chicago, the election defeat of Hanrahan (the States Attorney who set up the Hampton murder) is a win on the other side. It is important to ensure political consequences for those who keep the intelligence system going.

And to an extent it is easier than might be thought. In the *ACLU/Alliance* lawsuit in Chicago, the judge ordered the government to stop spying on the legal team in that case. The defendants appealed the decision — stating in effect that they have a right to spy on lawsuits in progress. Even the *Chicago Tribune*, which has been an apologist for many of the red squad activities, editorialized against this.

Getting the Word Out

But one of the frequent complaints has been that the local press simply does not ordinarily pay enough attention to what happens in the lawsuits. The Michigan *Benkert* suit has established its own newsletter to keep interested parties informed of what is going on. At the same time it is a tool for generating funding to carry on the suit.

Reaching the national press is in some ways easier. In Washington, there is something which can be called an "intelligence beat" — reporters who are looking for newsworthy items, who know what is new and what isn't, and who want to show their editors that there is more than enough going on to justify keeping them on the issue.

The Center for National Security Studies in Washington is in a position to bring new information to the attention of the national press. If

people involved in lawsuits around the country contact the Center, it will be possible to put out a press release at the same time in both the city where it originates and into the national media. Those interested should contact Susan Kaplan, 122 Maryland Ave., NE, Washington, DC 20002, (202) 544-5380.

Reform Legislation

Litigation against the operations of intelligence units can only go so far. Although the government may be styled the defendant, it is the plaintiff who is on the defensive. The kinds of relief which a lawsuit can produce is limited by the state of the law on the issue.

What is needed is reform legislation — organizing against political spying has to center around the establishing the right to political space. If legislation is not enacted, self-issued investigative guidelines — a pseudo-solution which sounds good but changes little — will be passed off as reform.

The Center for National Security Studies has participated in drafting legislation for an FBI charter, and has now come up with a draft model of anti-surveillance legislation, for state and local governments to cope with the red squad problem.

Copies of the bill and other materials are available from Jerry J. Berman, CNSS, 122 Maryland Ave., N.E., Washington, DC 20002 (202) 544-5380. Feedback from the public is welcome. To act as a clearinghouse for what is taking place around the country, Berman would also like to be sent copies of pending legislation, investigatory guidelines, and government reports on red squads which other people working in this area may have.

Legislation to curb the activities of a political police must (1) prohibit political surveillance, (2) regulate any police operations which may also intrude on First Amendment activity, and (3) provide an antidote to the police use of secrecy to conceal their operations. Briefly, the major points of the model statute are laid out below.

End Police Authority to Investigate Politics

- Restrict Police authority to investigating only crimes, and only where there is a reasonable suspicion to believe that a crime has been, is being, or is about to be committed.
- Abolish police intelligence units or red squads.
- Repeal "speech crimes," which limit and punish speech that is protected by the First Amendment.
- End political surveillance, i.e., collecting, main-

taining, or disseminating information on political activities.

- Outlaw police harassment of lawful political activity.
- Define police duties at planned demonstrations as facilitating the public's right to petition.
- Ban police cooperation with other public agencies or private groups (such as LEIU) to do what is forbidden by statute.

Restrict Police Tactics in Criminal Investigations

- Prohibit selective criminal investigation directed at persons or groups because of their political activities.
- Repeal all electronic surveillance; or in the alternative, enact strict limitations, including a judicial warrant with provisions to minimize invasion of privacy.
- Require a judicial warrant for using informers or undercover agents in criminal investigations.
- Ban police entrapment (e.g., agents provocateur).

Citizen Access to Files

- Require that when an investigation is ended, the subjects of informer surveillances be notified of and given access to the files.
- Give citizens the right to seek correction or deletion of false information in their investigative files.

These last provisions of the draft bill — which give a right of notification and correction — insure that the other restrictions on police operations will be honored. This bill reverses the current situation; in the future, police will have to assume that their decisions and procedures will be scrutinized for abuses of power.

After the Conference: Putting Together Resources

This discussion has only touched lightly on some of the organizing tactics, interests, experiences, and resources that were shared at the Conference Against Government Spying. The details of putting together a movement from scattered lawsuits, sporadic press coverage, and an assortment of proposed reforms remain to be worked out.

But the Conference has brought together resources that are now available in three areas which can generate reform. To facilitate action in the courts, it has produced a litigation manual and the start of sharing future developments. To help generate coverage in the press, it has offered the beginnings of a method for getting local developments into the national press. And finally, to help

get new laws passed, the Conference has provided the start of a coordinated nationwide effort for legislative reform. The final goal — whether the right to personal political space can be eked out of a political police system — is still the only proof of effectiveness, but the necessary beginnings are underway.

FOOTNOTES

¹People wanting a comprehensive treatment of such litigation should get the Conference's excellent manual, *Pleading, Discovery, and Pretrial Procedure for Litigation Against Government Spying: Conference Handbook*, by Robert C. Howard and Kathleen M. Crowley, with contributions from Sonja Baesemann, Lance Haddix, Susan Sekuler, and Christine Wheelock. Copies available from the Better Government Association, Room 1118, 360 North Michigan Ave., Chicago, Illinois 60601. Price: regular/\$15; tax exempt organizations/\$7.50. PREPAID orders only.

²The Cook County Grand Jury Report on Chicago red squad operations is reprinted in the January 1976 issue of *FIRST PRINCIPLES*. Use the order blank on page 15 for this and other back issues of FP.

³*Socialist Workers Party v. Attorney General*, 73 Civ. 3160 (S.D.N.Y.). See the September 1976 and January 1977 issues of *FIRST PRINCIPLES*.

⁴*Alliance to End Repression v. Rochford*, No. 74 C 3268 (N.D. Ill.) and *American Civil Liberties Union v. City of Chicago*, No. 75 C 3295 (N.D. Ill.) (consolidated for discovery). See the January 1977 issue of *FIRST PRINCIPLES*. This issue also contains a docket of red squad cases in litigation across the country.

⁵*Hampton v. Hanrahan*, No. 70 C 1384 (N.D. Ill.) For a discussion of the facts behind the *Hampton* suit, see "Fred Hampton: A Case of Political Assassination," by Susan Cantor, *FIRST PRINCIPLES*, November 1976.

⁶*Laird v. Tatum*, 408 U.S. 1 (1972).

⁷See the December 1975 issue of *FIRST PRINCIPLES* for a discussion of possible legislative changes in the law dealing with political surveillance.

⁸A class action is a lawsuit in which plaintiffs who are named on the court papers also seek to establish that they represent a broader group of people; one case can then represent literally thousands of people. For a discussion of class action suits, see the May 1976 issue of *FIRST PRINCIPLES*.

⁹Discovery is the process whereby a court order gives one side in a suit access to evidence which the other side has in its possession. This includes access to records and the right to ask questions about the activities which are involved in the lawsuit.

¹⁰*Benkert v. Michigan State Police*, No. 74-0230934 (Wayne Cty. Cir. Ct.) See the January 1977 issue of *FIRST PRINCIPLES*.

¹¹See the March 1976 issue of *FIRST PRINCIPLES* for a discussion of what the Ford EO actually does; see also the Center for National Security Studies' *INTELLIGENCE REPORT*, issue no. 2, available from CNSS, 122 Maryland Ave. NE, Washington, DC 20002.